

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

77-1085

ORIGINAL

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

B
PJS

-against-

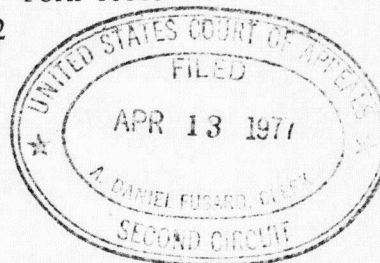
LOIS SAMPSON,

Appellant.

*Appeal from a Judgment of Conviction in the United District
Court for the Southern District of New York.*

BRIEF FOR APPELLANT

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

UNITED STATES OF AMERICA,

Appellee,

-against-

Docket No. 77-1805

LOIS SAMPSON,

Appellant.

-----X

BRIEF FOR APPELLANT LOIS SAMPSON

ISSUES PRESENTED FOR REVIEW

1.) Whether the District Court erred in permitting the Government to try together several conspiracies for narcotics distribution by independent dealers based on the fact that Jack Brown was a common source for the drugs. For essentially the reasons stated in United States v. Bertolotti, 529 F2d 149 (2nd Cir. 1975), involving many of the same transactions, alleged conspirators, and prejudicial testimony, the joint trial violated rights of defendant Lois Sampson, who participated in only one distribution phase.

2.) Whether the District Court erred in denying Lois Sampson's motion for a separate trial (severance).

3.) Whether the District Court erred in denying the defendant's (Lois Sampson's) motion to suppress evidence,

which was introduced at trial and was prejudicial.

4.) Whether the District Court erred in its failure to set aside the verdict of the jury, after a juror expressed in writing, that the length, complexity and number of defendants in the trial prevented logical deliberations by the jury.

STATEMENT OF THE CASE

Lois Sampson, defendant-appellant (hereinafter for purposes of clarity referred to as Appellant) was indicted during the month of April, 1976. She and twenty-three (23) other defendants were charged with a violation of Sections 173, 174, 812, 814(A)(1) and 841(b)(1)(a), 951, 952 and 960 of title 21, United States Code, to wit:

"Conspiring to unlawfully import and transport from and through unknown countries in South America large amounts of narcotic drugs, specifically heroin and cocaine, concealing and selling such drug, while doing business in Washington, D.C. and New York City, with the intent to distribute contrary to law."

Appellant is the wife of co-defendant Joseph Sampson, a/k/as "Bootnose", who was also indicted with her.

The trial herein was commenced on August 10, 1976 before Judge Richard Owen. The verdict of the jury was rendered on November 12, 1976.

Appellant was found guilty of Counts 1, 19, 20 and 21 of the indictment. Appellant was sentenced to twelve (12) years imprisonment with a three (3) years special probation.

ARGUMENT

POINT I

THE GOVERNMENT PROVED SEVERAL CONSPIRACIES RATHER THAN ONE. SHOCKING AND INFLAMMATORY EVIDENCE ON THE CONSPIRACIES IN WHICH SHE WAS NOT INVOLVED
PREJUDICED LOIS SAMPSON.

There were at least Four and Possibly Six Conspiracies

In United States v. Bertolotti, 529 F2d 149 (2d Cir. 1975) this Court reversed the conviction of seven defendants charged with a single narcotics conspiracy based on their ties to Albert Rossi. Their dealings in question were "loosely connected" and "diverse", and this Court was willing to ascribe to the participants in one transaction, knowledge of the others. Each of the defendants was prejudiced by voluminous testimony about other Rossi endeavors in which he had no part, and by "shocking and inflammatory" discussions in wiretapped conversations of Peter Mengrone. Bertolotti's reversal followed warnings in United States v. Sperling, 506 F2d 1323 (2d Circuit 1974) and United States v. Miley, 513 F2d 1191 (2d Circuit 1975), among others, that the single conspiracy theory could not

sustain multiple defendant trials when the acts, although linked at the top, could be reasonably regarded as two or more conspiracies.

In this case, the Government failed to prove a single conspiracy.

Granted that Lois Sampson knew Jack Brown, was the wife of Joseph Sampson, and the sister of Ann Reynolds.

The Government proved several different conspiracies, which were not interlocking. These conspiracies could be grouped according to urban areas in the United States and were not sufficiently presented at trial to make the distributors co-conspirators with each other when each of the distributions was independently arranged, by independent people at independent times and for independent reasons.

Lois Sampson, her husband, William Hightower and Sidney Foster could be considered the Washington, D.C. group.

Don Wilson, James Laws, Tommy Davis, Charles Cowpers and Albert Lee Jones could be considered the New York Metropolitan group.

There was the Miami group and the Chicago group. The only nexus to these groups was the alleged transaction of Jack Brown. However, these groups worked independently of each other and in many instances intra-group dealings by various individuals was clandestine (eg: Sidney Foster allegedly receiving drugs for himself, while he was an

alleged courier for William Hightower).

The independence of the different groups is clear and each group and members of the group exercised a "Laissez Faire" philosophy to their transactions, and did not seek to aid the other group; or assist members of the particular urban group in their dealings. It should be noted that Jack Brown had extensive drug dealings before he met Lois Sampson and she did not assist him in any transaction with other urban groups, except Washington, D.C.

Further, there is a serious question raised in the record concerning Ann Reynolds' transactions with Lois Sampson and Jack Brown. Ann Reynolds was acting in her own capacity as an independent dealer. She exercised control over the cocaine and did not inform Lois Sampson where it was being held. The aforementioned buttresses the theory that Lois Sampson was not aware of or concerned with the other activities of Jack Brown.

In United States v. Sperling, supra, it would inquire whether the ties within the different urban distribution groups were stronger than the ties from one to the other.

In short, the proof showed four and possibly six separate and independent distributions, a mass of very loosely connected transactions no differently basically from those in Bertolotti. Unless they were part of a "real organization" (see United States v. Bertolotti, 529 F2d at 149), headed by the Riccos, or "vertically integrated"--

and the conclusion is inescapable that they were not -- these separate actors cannot be tied into a single conspiracy, or be found to have reached an agreement with each other relating to the sale of narcotics. United States v. Bertolotti, supra; United States v. Miley, supra, (Goldstein, Bachia and Godinsky not part of the conspiracy with Long, Wenzler, Flores and Vavarigus although both groups dealt with Brandt and Miley); Kotteakos v. United States, 328 U.S. 750 (1946); United States v. Borelli, 336 F2d 376, 383-84 (2d Circuit 1964); United States v. Bynum, 485 F2d 490 (2d Circuit 1973) ("familiar pattern" of narcotics operations permitting imputed knowledge of wider scope of "vertically integrated" combination). Here, Jack Brown's fear of a "Hit-Man" or "Executioner" prejudiced Lois Sampson's right to a fair trial. Some of the defendants may have had business or personal reasons to execute Jack Brown; however, Lois Sampson was a social friend of Jack Brown and to lump her in the group violated her rights to a fair trial and impartial trial. Lois Sampson had nothing to do with Louise James, Willie Womack or Frank Moten. She was inevitably prejudiced from the spill-over from that part of the case into her separate case.

POINT II

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A SEPARATE TRIAL.

Prior to the trial of the indictment herein, Lois

Sampson moved for a severance; which was denied. Rule 8(b) of the Federal Rules of Criminal Procedure provides for joinder of claims and defendants; however such joinder is subject to review initially by the trial judge and later by the Appellate Court. It is claimed herein that the refusal to grant a severance under Rule 14 of the F.R.C.P. was an abuse of discretion.

Although the Court is usually reluctant to disturb the trial court's decision; when there is an abuse of discretion, the court will review same. In Schaffer v. United States, 362 U.S. 511, the court said "the granting or denial of a severance under Rule 14, is a matter within the trial court's discretion and reversal is appropriate only if abuse of that discretion has been shown. (See United States v. Cohen, 518 F2d 727 and United States v. Bernstein, 533 F2d 775). However, such decisions will be disturbed if the reviewing court determines there was an abuse of discretion in failing to grant a severance once prejudice to a particular defendant has been made manifest (United States v. Kelly, 349 F2d 720 and Schaffer v. United States, supra) on such appeal the burden is on the defendant to show that she or he will be prejudiced by a joint trial, failure to grant a separate trial is in effect a denial of a fair trial altogether (United States v. DeSapio, 435 F2d 272 and United States v. Ong, 397 F. Supp. 385).

This trial involved a major narcotics conspiracy,

charging 23 defendants from importers, middlemen, wholesalers, and retailers. Appellant's involvement was at the minimal, yet as a result of the complexity of the magnanimous single trial, Appellant was sufficiently prejudiced as to have been denied an opportunity for a fair trial. The initial prejudice began when both Appellant and her husband were tried together. This not only allowed the jury to infer that because these two defendants were joined by the marital knot; they were also inferentially joined by the criminal knot. Moreover, evidence against the husband was thus able to "spill-over" to the wife. Such an inference and "spill-over" was improper, highly prejudicial and the precaution of separate trials should have been afforded.

Of equal force, is the "spill-over" and resultant contamination of Appellant's position in being tried along with so called "original crime defendants". In a conspiracy trial with multiple defendants, admissions are allowed involving one conspirator as testimony against all. The witness Parker, son-in-law of the Government's informer (Jack Brown), gave no direct testimony implicating Appellant. However, when Parker testified to a conversation with defendant Hightower, incriminating in-direct and prejudicial evidence was admitted against Appellant, to wit: that Parker said Hightower said that some cocaine received from Appellant was not cut properly (Tr. p. 3561). Co-conspirators quantum

of evidence involving Appellant is disparate in comparison with the other defendants.

It was held in United States v. Gambrill, 449 F2d 1148, that "severance may be required to protect a defendant from a spill-over of evidence where there is gross disparity in the quantum of evidence as to the defendants." The evidence connecting Appellant was limited to the testimony of Ann Reynolds, an indicted co-conspirator and sister of Appellant. The acceptance of Ms. Reynolds' testimony in this single trial was pregnant with prejudice and sufficient to require a separate trial if fairness to Appellant was to be preserved. The admission of the sister's testimony was unjustifiably prejudicial to Appellant. This testimony not only implicated other members in this conspiracy, but disproportionately prejudiced Appellant. The jury was thus allowed to attach more weight to Ms. Reynolds' testimony simply by reason of her relationship to Appellant and the inference that relatives who testify against one another, must be telling the truth. This is an impermissible and highly prejudicial inference which cannot be fairly overcome in a multiple defendant trial.

The other testimony was from Jack Brown, an un-indicted co-conspirator who testified to giving Appellant quantities of narcotics to deliver to an individual in Washington, D.C. (Tr. p. 2158). Although the credibility of a Government witness in a prosecution for conspiracy to sell heroin, is

for the jury (United States v. Costa, 425 F2d 950), the qualifications of the potential witnesses are questions for the Court (Wigmore on Evidence, Section 487).

Jack Brown was not competent to testify, once it was established that throughout the time of the conspiracy it was shown that he habitually used methadone, cocaine and heroin. His use of drugs and medication continued even during the trial. A voir dire should have been conducted to determine whether Jack Brown had the capacity to remember and to remember accurately, the facts about which he was testifying. Upon such hearing, his testimony should have been stricken.

The determination of the efficacy of a motion for severance does not end once the trial begins, but continues throughout, vesting the judge with a continuing duty to grant a severance, if prejudice to a particular defendant is made manifest (United States v. Kelly, 349 F2d 720, supra).

During the present trial, such a demonstration occurred when evidence of the shooting of Appellant by her husband, a co-defendant, was admitted into evidence (Tr. p. 3485), and the totality of Ann Reynolds' testimony implicating the Appellant.

Instances of prejudice may occur in a long or complicated trial, as in the present one, if the evidence relating to each defendant becomes confused in the mind of the jury.

The letter to Judge Owen from the jury's forewoman evidences the jury's confusion. Although such does not impeach the verdict, it none the less is relevant in considering the instant appeal. Notwithstanding the Court's preference to use limiting instructions as the appropriate means of obviating the effects of prejudice in the trial of multiple defendants (United States v. Cohen, 518 F2d 727), the apparent inability of the jury to compartmentalize the evidence underpins the verdict (United States v. DeLarose, 450 F2d 1057).

Such failure on the jury's part lends credence to the argument that "the jury might cumulate the evidence introduced by the prosecution to find a guilty defendant whose connections with the conspiracy was at best marginal" (United States v. Morrow, 537 F2d 120).

The public policy, economic and philosophical considerations surrounding single trials of conspiracy charges, must be subjugated to the right of a defendant to a fair trial. A verdict must result from proof of the crime, not guilt by association, and when that safeguard can only be provided by a separate trial, then such relief must be provided on review if denied originally.

POINT III

THE TRIAL COURT ERRED IN DENYING THE PRE-TRIAL MOTION TO SUPPRESS EVIDENCE.

Pursuant to an arrest warrant issued by the United

States District Court, Southern District of New York, Appellant was arrested at her home in the State of Maryland. At the arrest, officers seized telephone books, marijuana and other paraphernalia. A motion to suppress this evidence was made and denied by Judge Owen on July 7, 1976. Appeal from that decision is taken.

A valid warrantless search may be made as incident to a lawful arrest. In Chimel v. California, 395 U.S. 752, the Supreme Court held that the incidental search allowed by a lawful arrest is limited to the arrestee's person and to the area within the individuals immediate control. The Court construed that phrase to mean the area from which the arrestee might gain possession of a weapon or destructible evidence. Here, the defendant could have been arrested when she alighted from a taxicab or at her place of employment. Measured by this guideline, the officers' actions in this case are clearly beyond the scope of authority. The authority ends once the arrest is executed, when freedom of movement of the arrestee has been curtailed.

In the more recent case of United States v. Brono, 403 F. Supp 297, the court held that the "Search of entire apartment by police officers, after they had placed occupants under arrest for possession of marijuana cigarettes, was not justified as search pursuant to arrest...", (United States v. Miley, 513 F2d 1191 cert. denied), (Goldstein v. United States, 96 S. Ct. 74). The Plain view doctrine is also inapplicable as it is not so flexible a concept

as to make legal what is procured illegal. Nor is the decision altered because the arrest took place in the State of Maryland.

The most recent pronouncement of a District Court on the officers scope of authority to search making an arrest is found in United States v. Carter, 522 F2d 666; there the court said "an arresting officer may search the arrestee's person to discover and remove weapons and to seize evidence to prevent its concealment or destruction and may search the area within the immediate control of the person arrested; but there is no comparable justification for routinely searching a room other than that in which arrest occurs. Moreover, fruits of intrusion which exceeded its legitimate scope are inadmissible in subsequent criminal proceedings (United States v. Del Toro, 464 F2d 520. Under such authority, the trial court's denial of the suppression motion was erroneous.

POINT IV

THE VERDICT OF THE JURY SHOULD BE SET
ASIDE, AFTER A JUROR EXPRESSED IN
WRITING, THAT THE LENGTH, COMPLEXITY
AND NUMBER OF DEFENDANTS IN THE TRIAL
PREVENTED LOGICAL DELIBERATIONS BY
THE JURY.

On or about November 27, 1976, Mrs. Isabelle Blan, a juror and foreperson of the jury, forwarded a letter to the Hon. Irving Kaufman, Chief Judge of the United States

Court of Appeals for the Second Circuit. The letter which is part of the file in the Circuit Court, informs the Court that this juror and others were confused, because of the length of the trial, number of defendants and "spill-over" affecting defendants.

In view of the letter, the verdict of the jury should be set aside and a new trial granted.

CONCLUSION

The decision of the Trial Court denying the motions to suppress and for a separate trial should be reversed and a new trial should be granted to the Appellant. In view of the fact that a juror expressed reservations concerning the jury deliberations, a new trial should be granted and the verdict of the jury should be set aside.

Respectfully Submitted,

Hudson H. Reid, Esq.
Attorney for Appellant
Lois Sampson

COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

- against -

, OIS SAMPSON,
Appellant

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

ss.:

I, Victor Ortega, being duly sworn, depose and say that deponent is not a party to the action,
is over 18 years of age and resides at 1715 Lacombe Avenue; Bronx, New York

That on the 12th day of April, 19 77 at One St. Andrews Plaza
New York, N.Y.

deponent served the annexed

Brief

Robert Fiske
U.S. Attorney

upon

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 125h 12th
day of April, 19 77

Robert T. Brin

Victor Ortega
Victor Ortega

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977